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CURRENT TOPICS

Lord Justice Denning in Philadelphia

In an address delivered on 25th August at the American Bar Association's annual convention at Philadelphia, Lord Justice Denning said that some of the basic freedoms of man, including the freedom of the Press, were being abused both in the U.S.A. and in Britain. He stated that some newspapers, pandering to sensationalism in order to increase their circulations, had invaded the privacy of individuals, and had prejudiced the outcome of trials by comment on cases which were *sub judice*. He added that the trade unions had also violated certain freedoms through official and unofficial strikes, and recommended the establishment of impartial tribunals to settle trade union disputes, and laws to prevent unions from depriving men of their right to work.

Trade Unions and the Law

Lord Justice Denning is not reported to have made any reference to the proposals to strengthen the powers of the Trades Union Congress's general council to mediate in industrial disputes, set out in the council's annual report, published on 23rd August. In the light of recent experience, the report states, the council will propose to Congress that they should be able to assist in disputes before negotiations break down and deadlock is reached. An amendment to the rules would permit the council to warn all affiliated unions who might be affected by a dispute that trouble was threatened in a certain industry. At present, the council may discuss such threats only with unions in the industry concerned. Another amendment would give the council the right to call representatives of affected unions into consultation if there were a likelihood of negotiations breaking down and creating a situation in which other bodies of workpeople affiliated to Congress might be involved in a stoppage of work or their wages, hours, and conditions of employment imperilled. This would give the T.U.C. general council a power similar to that held and used from time to time by the Minister of Labour under the Industrial Courts Act of 1919—to inquire into the causes and circumstances of a trade dispute, whether it has been reported to him or not, if it begins to appear dangerous. Conciliation is a good thing in vital matters such as this only when its success can be guaranteed. Until the law declares anti-social strikes illegal, and defines them, the public, including the trade unions, will continue to be victimised by "hold-ups."

Capital Punishment

Under the chairmanship of Mr. Victor Gollancz, an executive committee consisting of eminent writers, lawyers, politicians and others is to launch "a national campaign with the object of bringing capital punishment to an end at the earliest possible moment." By means of books, pamphlets, public meetings, abstentions from attendance at places of entertainment on nights preceding executions and other methods, it will be sought, without resort to sensational action such as demonstrations outside prisons, to put an end to capital punishment. Contributions are invited, and supporters

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unable to contribute are asked to send their names to the campaign headquarters at 14 Henrietta Street, W.C.2. "It is believed," the committee state, "that there has recently been a significant change in public opinion on the question of capital punishment: that a much higher percentage of the population is in favour of abolition than formerly: and that many more are beginning to think seriously about the matter for the first time, and are now open to argument." Even though the matter has apparently been fully debated, the campaign is welcome, for it reopens a matter on which law-abiding citizens must never cease to search their consciencies.

Bikes

"No person shall . . . cause or permit any cycle to be ridden on any road unless it complies with the provisions of these regulations." The regulations are those contained in S.I. 1954 No. 966 relating to brakes on pedal cycles, and they further provide that if any person acts in contravention he shall be liable to a fine not exceeding £20. It was presumably for a contravention of the regulation which we first cited that two Norfolk fathers were recently fined, so some papers report, in respect of bicycles ridden by their children without efficient brakes. It is an apparent exception to that piece of negative comfort to be found in the text-books of tort and crime to the effect that a parent is not liable for wrongs committed by his offspring unless he is an instigator. A child needs no instigation to ride a bicycle whatever its condition. In the absence of any details of the East Anglian cases—can any local reader supply them?—we are left free to speculate as to the circumstances in which a father may be said to cause or permit his son's bicycle to be ridden. There are recent decisions on causing or permitting the use of a motor vehicle on a road, for example, *Shave* v. *Rosner* (1954), 98 SOL. J. 355, in which it was restated that when the two words "causes" and "permits" are juxtaposed alternatively, "permits" means giving leave and licence, and "causes" involves control or dominance. But the circumstantial *milieu* there was not a domestic one. If I buy an old crock for my son and do not see that the brakes work before he takes it on the road, I have no moral ground for complaint if I am held to have committed a breach of the regulations. If, on the other hand, I watch the boy take to pieces a perfectly good brake, must I then confiscate the whole machine lest he ride it out of the gate behind my back? Road safety, we agree at once, is no subject for levity, but some nice points seem in the offing all the same if the police press their view, voiced by an officer after the recent proceedings, that "parents should see that their children's bicycles are kept roadworthy."

Luncheon Vouchers and Income Tax

IN an article published with the 1954–55 report of Pye, Ltd., on 22nd August, the luncheon voucher system is compared with the truck payments or payments of wages in kind which were made illegal by the Truck Acts. The voucher system, the writer stated, ties city workers to a group of restaurants with "a dangerously assured patronage and an unyielding menu," while the primary gainers are the restaurants within the scheme. Another group which undoubtedly gain are the large offices, which, he said, are paid a considerable rebate from public funds for offering facilities for a mid-day meal. He added: "An industrialist who runs a canteen in his works can charge only the losses he incurs to his working expenses. But by some peculiar manipulations of logic known only to business accountants and H.M. Inspector of Taxes, firms which cannot be bothered to provide such facilities are allowed to charge the entire cost of their employees' meals against business expenses."

Hire-purchase and Inflation

A REASONED justification of the system of hire-purchase, and a criticism of the policy of restricting hire-purchase sales adopted by the Government in recent statutory instruments, formed an important part of Mr. J. GIBSON JARVIE'S speech as chairman of the United Dominions Trust, Ltd., at its thirty-third annual general meeting on 23rd August. He said: "The theorist and impeccable moralist insist that hire-purchasers are living beyond their incomes. They take no notice of the indubitable fact that hire-purchasers faithfully meet their commitments. Since that is a fact, it surely proves that hire-purchasers do not over-commit themselves. . . . Without it large industries would be seriously affected. Exports in some of the biggest lines would drop. Factories would reduce output, men would be unemployed. . . . Hire-purchase made mass production possible and so gave us lower prices. It created wide markets for products which otherwise would have found only a limited demand at high prices." In the year under review the consolidated balance sheet totals rose from £34,361,575 to £58,241,773 and profits earned went up from £1,060,122 to £1,780,288.

A Judge's Long Vacation

How do the judges spend their time in the Vacation? A busy solicitor, snatching his paltry two or three weeks' summer holiday, might well be interested in the manner of enjoying such bliss as two months' leisure. The curtain has been partly lifted by no less a person than Sir NORMAN BIRKETT, who won £1 13s. 4d. on 26th August in a literary competition in the *Spectator* for just over a hundred words of description of the battle in which David slew Goliath, as reported by JOHN ARLOTT. Sir Norman's magical command of words was at least as conspicuous as his successful parody of the radio commentator's style. "One moment," he wrote, "there was Goliath of Gath, a big, burly man, standing about six cubits, wouldn't you say, Arthur?—with a sword as big as himself, shouting swaggering challenges to Israel, and before you could say Gilbert Harding he was flat on his face with a stone in his forehead, whirled like lightning from the sling of a ruddy-cheeked lad called David." This glimpse of a great lawyer's versatility whets the imagination and makes one wonder whether the law's gain in Norman Birkett's choice of a profession is not a great loss to certain other professions. It is, nevertheless, only a glimpse, and we who are engaged on lowlier tasks with shorter holidays must remain for the most part ignorant of how the judges spend their time during the Vacation.

Records of Long Service

AMONG the long service records which a correspondent, writing in *The Times* of 22nd August, recalled, was that of Mr. J. WYATT, who entered the office of a Bristol solicitor in 1865 and remained in the same service until 1947. Both in the matter of longevity and in that of length of service, the solicitors' profession can offer outstanding examples. If asked to what can be attributed the great age of some solicitors and their clerks, as well as their continued vitality of mind and body, the impartial observer cannot name any physical specific, such as the abstention from or consumption of alcohol, tobacco, or food. More probable than any cause is the interest and variety offered by the work, which brightens the mind with continual exercise, and necessitates healthy self-forgetfulness by means of identification with the client's interests.

THE RATING AND VALUATION (MISCELLANEOUS PROVISIONS) ACT, 1955

ALTHOUGH the Rating and Valuation (Miscellaneous Provisions) Act, 1955, which received the Royal Assent on 27th July, passed through both Houses of Parliament at an unusual speed for so comprehensive a measure (it contains seventeen sections and eight schedules, and occupies forty-three pages of print), it differs very materially from the Bill originally presented to the House of Commons in March, and re-presented to the new Parliament in June unaltered except for the deletion of the main Scottish provisions. In view of the changes the Act has undergone, the following summary of its provisions as finally enacted may be useful.

New Valuation Lists (*s.* 1)

The valuation officer prepares the new valuation list, including prescribed particulars of totals, signs it, and sends it with a copy to the rating authority. If by reason of a material change of circumstances since the valuation he concludes that the list needs to be altered, he can alter it up to the time at which it comes into force. Immediately on its receipt the rating authority must give notice of it and of rights of inspection and making proposals for altering it. Where any value is increased above that in the previous list without substantial alteration of the hereditament, and a proposal to reduce it is made in the first year of the new list, the rates levied on the hereditament will not exceed those levied in the preceding year until the proposal is settled (defined in subs. (8)).

Proceedings Relating to Valuation Lists (*s.* 2)

A rating authority may, within twenty-eight days after receipt of a written notice from the valuation officer that he does not intend to make a proposal to insert a hereditament in the valuation list itself, make such a proposal. A proposal for the alteration of a valuation list now current, made otherwise than by the valuation officer or the owner or occupier after the passing of the Act (27th July, 1955), will not have effect. Time limits of seven or twenty-one days in connection with proposal procedure are increased to twenty-eight days (but not the seven-day limit for the valuation officer to transmit copies of his own proposals). A new code of procedure for proposals is set out in Sched. I (Pt. I repeats s. 41 (1) to (3) of the Local Government Act, 1948, as amended, and Pt. II sets out a new s. 41 (4) to (8)). Under the new procedure the valuation officer will cause the valuation list to be altered to give effect: (i) to a proposal where it is not objected to or every objection is withdrawn and he made the proposal or is satisfied it is well founded or if after six months he has not objected or has withdrawn his objection; (ii) to an alteration agreed between persons whose agreement is requisite, whether that proposed or some other, without or before the determination of any appeal or arbitration; the persons whose agreement is required are the valuation officer, the proposer, any objector, the occupier, and the rating authority. If a proposal is objected to and the objection is not unconditionally withdrawn, the valuation officer must, within six months of its making or receipt by him, send a copy, with copies of all notices of objection, to the clerk of the local valuation panel. He can within five months object to the proposal himself and notify the proposer that, failing withdrawal of the proposal within fourteen days, he will be treated as appealing against the objection. Failing such withdrawal, he must between fourteen and twenty-eight days after his objection send to the clerk of the local valuation panel a copy of the proposal, of his notice (if any) and of any other notice of objection not withdrawn. He notifies this to the proposer, any outstanding objector, and the rating authority. So sending the proposal has effect as an appeal to the local valuation court against every outstanding objection.

An officer of a rating authority, acting under any special or general resolution of the authority, may authorise the institution, carrying on or defence of any proceedings or the taking of any step in relation to the valuation list open to the authority.

Returns as Evidence (*s.* 3)

Returns of rent, etc. (under s. 58 of the Local Government Act, 1948, ss. 40 and 41 of the Rating and Valuation Act, 1925, and ss. 55 and 57 of the Valuation (Metropolis) Act, 1869, and certain returns requested by valuation officers before the Valuation for Rating Act, 1953, containing information which would have been reasonably required under that Act), are made admissible as evidence in valuation proceedings. Valuation proceedings are those on, or in consequence of, an appeal to a local valuation court or of a reference to arbitration under s. 50 of the 1948 Act, excluding those relating to ascertainment of net annual value by reference to the accounts, receipts or profits of an undertaking. Unless the contrary is shown, a document purporting to be such a return is presumed to be one and to have been made by the ostensible maker in the capacity specified in it. Before using such returns as evidence, the valuation officer must give fourteen days' notice to the proposer and any objector specifying the returns and hereditaments to which they relate, and allow those persons on giving twenty-four hours' notice to inspect and take extracts from them at any reasonable time. A recipient of a notice may give a counter-notice specifying hereditaments comparable in character or otherwise relevant to his case, and not exceeding in number those specified in the valuation officer's notice, and requiring the valuation officer to permit him at any reasonable specified time to inspect and take extracts from all returns in his possession relating thereto and to produce such as he informs the valuation officer he requires before the hearing. On application by the recipient (with a right of appeal from a local valuation court to the Lands Tribunal) the court or tribunal may order the valuation officer to comply with such a notice, wholly or in part, where he has failed to do so (this applies with modifications to arbitrations). Service of notices is governed by s. 63 of the 1948 Act.

Making and Levying of Rates (*s.* 4)

Special rates cease to be made or levied in rural areas as from the coming into force of the first new valuation lists, and special expenses will be levied on an area or part of an area as an additional item of the general rate. A resolution of a rating authority will constitute approval of a rate under s. 4 (1) of the 1925 Act and s. 54 of the 1948 Act, although made without reference to any rate book or individual hereditaments, not taking account of any rating privilege (parts of areas or particular hereditaments) or not taking account of additional items leviable. This provision is retrospective, but there is a special proviso validating steps taken within the time required by statute after a resolution approving the rate book or the rates on the several hereditaments. The name of an occupier need no longer be inserted in the rate book where some other person is liable to be rated or to pay or collect rates under the Poor Rate Assessment and Collection Act,

1869, and the Rating and Valuation Act, 1925, s. 11 (notwithstanding s. 19 of the 1869 Act). A rating authority may resolve that hereditaments of which the assessments are increased above the local limits for compulsory rating of owners (under s. 11 (1) of the 1925 Act) at the forthcoming revaluation shall remain in the class of hereditaments subject to s. 11 (1), provided the increase is not above a maximum indicated. This resolution will determine on rescission of the original resolution for compulsory rating of owners or on the next new valuation list. Owner-occupiers entitled to owner's allowances under s. 11 (1) (*b*) of the 1925 Act will include those owning hereditaments up to the new maximum. A rating authority may make a rate by reference to a new valuation list before it has come into force.

Gross Value and Rateable Value (*s.* 5)

Hereditaments in respect of which a gross value is required to be ascertained are now re-defined as those consisting of " one or more houses or other non-industrial buildings, with or without any garden, yard, court, forecourt, outhouse or other appurtenance belonging thereto, but without other land." " House " includes part of a house. " Non-industrial building " means " a building, or part of a building, of any description, with the exception of factories, mills and other premises of a similar character, used wholly or mainly for industrial purposes, and premises valued as part of (*a*) a railway, canal, gas, water or electricity undertaking, or (*b*) any other public utility undertaking." " Appurtenance " of a dwelling-house or a school, college or other educational establishment includes all land occupied therewith and used for the purposes thereof. Section 22 (1) and (4) of the 1925 Act (Ascertainment of net annual value, including cases where gross value is required) is applied to London. The present statutory deductions from gross value to net annual value or rateable value are re-enacted in Sched. II, the different deduction applicable to London, except where a gross value in London is dispensed with, being retained. The reduction from net annual value to rateable value for public health rate reliefs in boroughs and urban districts in the provinces is not applied to London. The Minister of Housing and Local Government may by order (approved by resolution of both Houses of Parliament) substitute new deductions from gross value to rateable value in respect of any class of hereditament requiring a gross value. The deduction from gross value for any rate charge or assessment (for any drainage, wall, embankment, etc.) under s. 22 (1) (*a*) of the 1925 Act for any dwelling-house, private garage or private storage premises (within the 1953 Act) is to be one-third of the average annual amount (instead of the full amount) and in the case of a partly residential hereditament is, in effect, similarly reduced in proportion to the residential element.

Gas Boards (*s.* 6)

From the 1st April, 1956, gas boards cease to be liable to be rated for premises in their occupation, other than premises used as a dwelling-house or occupied wholly or mainly for the purposes of an undertaking for the supply of water. Instead they are deemed to be in occupation of a hereditament in any rating area in which they manufactured or supplied gas to consumers in the " penultimate year," i.e., the year but one before the rating year in question. This hereditament is not to be treated as situated in any part of an area in which expenses are leviable otherwise than on the whole area (i.e., by additional item of the general rate). The rateable value of the " notional " hereditament is calculated in accordance with Sched. III, Pts. I and II, and transitional provisions affecting gas undertakings from 1949–1956 under Sched. IV.

Places of Religious Worship (*s.* 7)

As from the coming into force of the first new valuation lists the following hereditaments are exempt from rating: (*a*) places of public religious worship belonging to the Church of England or the Church in Wales or certified as places of religious worship; (*b*) any church hall, chapel hall or similar building used in connection with any such place of public religious worship and so used for the purposes of the organisation responsible for the conduct of the public religious worship; and (*c*) any hereditament consisting of such a place of public religious worship and one or more church halls, etc. If such a hereditament or part of it is let (by tenancy or licence) for other use, and a payment in consideration thereof accrued due in the previous year, a gross value may be attributed to the hereditament, but only in so far as the average annual amount of the payments accruing due exceeds the average annual amount of the expenses attributable to the lettings.

Charitable and Other Organisations (*s.* 8)

Hereditaments affected are those: (*a*) occupied by organisations (corporate or unincorporate) not established or conducted for profit whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; (*b*) held on trust for use as an almshouse; and (*c*) consisting of a playing-field (used mainly or exclusively for open-air games or open-air athletic sports) occupied for the purposes of a club, society or other organisation not established or conducted for profit and not making any charge for the admission of spectators except on special occasions. Any hereditament subject to s. 7 or occupied by an authority having power to levy a rate within the Local Loans Act, 1875, will not have the benefit of the exemption. The rate chargeable on any such hereditament in the first year after the coming into force of the new valuation list may not exceed the total rates (including special rates) charged on it for the previous year. In succeeding years, the rates properly chargeable on the hereditament will be reduced in the same proportion as the rates were to be in the first year to give effect to the limitation laid down. Schedule V modifies this general rule in cases of occupation for part of a rate period, etc. A rating authority may at any time give notice to the occupier of the hereditament determining or modifying this limitation after the end of a year specified in the notice, being a year ending not less than thirty-six months after the notice. The rating authority has power to reduce or remit the payment of any rate charged on such a hereditament, including a rate limited as above. This section has effect also in relation to a rate period forming part of a year, with necessary modifications.

Other Reliefs (*s.* 9)

In arriving at the gross value of a hereditament, no account is to be taken of: (*a*) structures of the Minister of Health for the accommodation of an invalid chair or other vehicle (mechanically propelled or not) constructed or adapted for use by invalids or disabled persons; (*b*) structures of a local health authority or voluntary organisation under s. 28 (1) of the National Health Service Act, 1946, supplied for the use of persons suffering from illness or mental defectiveness; (*c*) structures of a local authority (under s. 29 of the National Assistance Act, 1948) or voluntary organisations (under s. 30) supplied for the blind, deaf, dumb and other handicapped persons; (*d*) similar structures but not owned or supplied as those in (*a*) to (*c*). Sewers (defined in s. 343 of the Public

Health Act, 1936, and s. 81 of the Public Health (London) Act, 1936), including any manhole, ventilating shaft, pumping station, pump or other accessory, are to be exempt from the date of the first new valuation lists. So are: (*a*) any land occupied by a river board or other drainage authority (Land Drainage Act, 1930) forming part of a main river (Pt. II of the Act) or a watercourse maintained by the authority; (*b*) any structure or appliance of a river board or drainage authority for maintaining or regulating the flow of water in, into or out of a watercourse forming part of such a main river (excluding rights of fishing or shooting constituting a separate hereditament). Assessment of advertising hoardings, etc., as separate hereditaments (s. 56 of the 1948 Act) is not to apply to those forming part of a railway or canal hereditament. Use of such a hereditament for letting advertising rights or for exhibiting advertisements by the British Transport Commission constitutes user for non-rateable purposes (s. 86 (1) of the 1948 Act) where the hereditament is used partly for rateable and partly for non-rateable purposes, for the purposes of Pt. V of the 1948 Act. These two provisions cease to have effect on a date the Minister may by order appoint.

Police Authorities (s. 10)

Police authorities (including the Receiver for the Metropolitan Police District) have power to make contributions in aid of rates in respect of hereditaments in or outside the police area occupied for police purposes. In the case of such a contribution after the date of the first new valuation lists, the value on which the contribution is made (but no gross value) is entered in the valuation list and taken into account in ascertaining totals and the proceeds of a rate. This is subject to the provisions of Sched. VI relating to the first new valuation list.

Water Rates (s. 11)

Where a water rate period of twelve months begins on or after the 1st January and before the 30th June of the year in which the new valuation lists come into force, the statutory water undertakers may make a water rate (provided it is based on values in the new lists) for each of two successive periods instead of the year: the "first special period" beginning on the date of the normal yearly period, lasting three, six or nine months, as the undertakers determine, and ending not later than the 30th September, and the "second special period" comprising the balance of the normal yearly period. If the first special period begins on or after the lists come into force, they are treated as not having come into force and the old lists are to apply for that rate. Statutory provisions affecting water rates apply accordingly to the two rates. Maximum and minimum amounts or rate poundages in calculating a water rate are reduced in proportion to the reduction in the duration of the special period from twelve months, except where already required to be so reduced. Where water rates are payable by half-yearly instalments, the undertakers may require a rate for a three months' special period to be paid in one payment and a rate for a nine months' special period to be paid in three quarterly instalments or one half-yearly and one quarterly instalment.

Increase of Controlled Rent (s. 12)

Where an increase of rent of a house subject to the Rent Restrictions Acts would become payable on account of an increase of rates in the year of the coming into force of the new valuation lists (apart from any proposal or appeal outstanding), a notice of increase served by the landlord on the tenant in that year will not have effect unless accompanied by a statement containing prescribed information as to the rights of the tenant conferred by the section. Where the landlord serves a notice of increase, if a proposal is made before or after it, the effect of which is to limit the rates payable to those levied on the house in the previous year until the proposal is settled (s. 1 (7)), the tenant may serve a notice on the landlord requiring the increase of rent to be suspended. The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, then has effect as regards accrual of rent, until the proposal is settled and the next demand note thereafter is received, as if the notice of increase had not been served, except that a tenant who pays the increased rent before serving the suspense notice cannot meanwhile recover the increase. The landlord may then serve a notice on the person from whom any rent accrued due in the intervening period specifying the unpaid balance of rent which would have been recoverable but for the suspense notice if no alteration in the valuation list has resulted from the proposal, or the lower increase of rates payable (if any) resulting from an alteration of the valuation list on the "settlement" of the proposal. That sum will then be recoverable by the landlord from the recipient of the notice, as arrears of rent if he is the tenant, though not for the purposes of recovery of possession of the house. If after service of a notice of increase the tenant does not serve a suspense notice, but the assessment is reduced when the proposal is "settled," a person who paid any rent accruing due before the next rate demand note may recover the excess payment on the basis of the increase which would have been permissible, or of no increase, if the valuation list, when coming into force, had been as altered. This excess rent will be recoverable from the immediate landlord of the tenant of the whole dwelling-house (not having a sub-tenant of the whole), or if there is no such tenant from the owner. Apart from these provisions a notice of increase has effect and rent is recoverable as if s. 1 (7) of the Act had not been enacted. The section applies to notices served on prospective tenants under s. 7 (4) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938. Powers of making regulations of the Minister of Housing and Local Government are widened, and there are certain definitions and references for the purposes of the section.

Charges for Levying Distress for Rates (s. 13)

The Minister of Housing and Local Government may make an order regulating fees, etc., of the levying of distress for rates, including those where goods distrained are not removed, whether a person is left in physical possession or not. The order may contain incidental and supplementary provisions, including provisions as to disputes. When the order comes into operation the Distress (Costs) Act, 1817, as extended by the Distress (Costs) Act, 1827, will cease to apply to distress for rates and "reasonable charges" payable under s. 1 of the Distress for Rates Act, 1849, will be construed as the prescribed charges.

Financial Provisions (s. 14)

Increases of Government expenditure attributable to the Act (including those relating to Exchequer grants, police grants—for contributions in aid of rates—and gas boards) are to be paid out of moneys provided by Parliament.

Miscellaneous (ss. 15–17)

These sections deal with repeals and amendments, interpretation, etc., short title, etc.

F. A. A.

SALES UNDER PRIVATE STREET WORKS LEGISLATION

WITH the increase in the number of cases where the Private Street Works Act, 1892, or other corresponding legislation, has been implemented since the war, it has been suggested that an article dealing with the procedure governing sales by local authorities in enforcement of road charges arising therefrom would be of general interest.

It is first necessary to explain the legal basis for the local authority's power of sale, which is, of course, only one—though in normal circumstances the most effective—of several methods by which they can enforce their charge on the land. If the authority are operating under the 1892 Act, they are given the powers of a mortgagee acting under a legal charge by way of mortgage—in particular those contained in ss. 101–110 of the Law of Property Act, 1925 (replacing corresponding provisions of the Conveyancing and Law of Property Act, 1881)—by s. 13 of the 1892 Act. If they are operating under s. 150 and allied provisions of the Public Health Act, 1875 (or under corresponding provisions of some local Act), they acquire those same powers only by the fact of registration of the charge on particular premises as a local land charge, for by s. 11 of the Land Charges Act, 1925, all Class B land charges are made enforceable as if they had been created under a deed by way of legal mortgage, and by s. 15 (2), *ibid.*, local land charges are given the attributes of Class B land charges. The actual power of sale must have "arisen" under s. 103 of the Law of Property Act, 1925, i.e., notice requiring payment of the money must have been served on the "mortgagor" (this would seem to be met by service of the usual demand on the "owner" within the meaning of the Public Health Act, 1875: Private Street Works Act, 1892, s. 5) and default made in payment for a matter of at least three months from such service (*Barker* v. *Illingworth* [1908] 2 Ch. 20), or alternatively, interest (payable at 4 per cent. per annum*) must be in arrear and unpaid for two months at least after becoming due. If the charge has been declared to be payable by instalments, it has been held that the statutory power of sale arises as soon as a single instalment falls due and remains unpaid for at least two months (*Payne* v. *Cardiff R.D.C.* [1932] 1 K.B. 241).

The conveyancing procedure on such a sale then needs consideration. It is clear that the local authority will not be able to deduce the usual thirty years—or even any—prior title, as they will not hold the title deeds, nor, it seems, will they be able to call for delivery thereof as they are not selling under an order of the court for foreclosure. Moreover, the charge being on the premises and not merely on any particular legal interest or interests (*Paddington Borough Council* v. *Finucane* [1928] Ch. 567; *Bristol Corporation* v. *Virgin* [1928] 2 K.B. 622), the local authority will be entitled to sell the fee simple although the defaulting "owner" within the meaning of the Public Health Act, 1875, may for the time being be a mere leaseholder. It seems, therefore, that in the contract for sale the local authority may wish to insert a special condition requiring the purchaser to dispense with any earlier title. On the other hand, while the purchaser will have to accept that position, he is quite safe in doing so, as the local authority's charge is so powerful as to override all prior interests, and it is quite immaterial who was the previous owner. Probably under an open contract a local authority's title could be forced on a purchaser without the need to adduce any prior title, provided the Act has been complied with.

The purchaser will, however, be concerned to ensure that the procedure of the relevant statute has been duly complied with in all its details, as otherwise the local authority's power of sale will not have arisen, and the whole transaction will be void. These details should be established, it is suggested, by inclusion in an abstract furnished by the local authority at their expense, and the purchaser should be given an opportunity of verifying the facts stated, being supported where necessary by a statutory declaration sworn by the clerk to the local authority, again at their expense. The material facts should then be repeated by way of recitals in the conveyance.

It is suggested in Prideaux's "Precedents in Conveyancing" (24th ed., vol. 1, pp. 674–679; see also "Encyclopædia of Forms and Precedents," vol. 14, p. 537, vol. 15, p. 1155, and vol. 6, p. 215), that the following facts should be so established in a case under the Private Street Works Act, 1892:—

(1) Adoption of the Private Street Works Act, 1892 (where appropriate), by the local authority. This may be proved by the minute book of the authority (Local Government Act, 1933, Sched. III, para. 3 (1)), and a copy of the newspaper containing the statutory advertisement. If adoption had taken place a considerable time previously, the purchaser would probably be justified in relying on a statement by the clerk in a statutory declaration to the effect that the Act had been adopted: *omnia praesumuntur solemniter esse acta.*

(2) Resolution by the local authority to carry out the specified private street works in the street—to be proved from the minute book.

(3) A statement that this last-named resolution was published as required by the statute and copies thereof were duly served on the "owners" (within the meaning of the Act) of the premises shown in the provisional apportionment—to be verified by the clerk's statutory declaration.

(4) A statement that the property to be sold was shown in the provisional apportionment and that it fronted or abutted on the street—this may be verified by inspection of the original provisional apportionment (which will be in the custody of the local authority) and of the property itself.

(5) A statement (to be verified by the clerk's declaration) that a copy of the resolution was served on the owner of the premises to be sold. A certain amount of detail will have to be established here, sufficient to satisfy the vendor that service was effected in accordance with the Act, and that the person served was in fact the owner within the meaning of the Public Health Act, 1875—not necessarily, of course, the fee simple owner.

(6) A statement to the effect that the provisional apportionment and all other necessary documents were duly deposited in accordance with the Act, and that any objections made were withdrawn or disposed of by the local magistrates. This again will have to be verified by the clerk's declaration.

(7) A statement establishing the preparation of the final apportionment by the council's surveyor and showing the amount charged on the premises to be sold. It should be noted that this apportionment does *not* (unlike the provisional apportionment) have to be adopted by the council. This item can be verified by production of the original final apportionment, signed by the surveyor.

(8) A statement—to be verified in the clerk's declaration—that a notice of the final apportionment was served on all

* This is the current rate: Private Improvement Expenses (Rate of Interest) Order, 1952 (S.I. 1952 No. 774); previously the rate was 2½ per cent. Under the Private Street Works Act interest runs from the date of the final apportionment, but under the Public Health Act interest only runs from the date of the demand.

the owners of the premises affected, and on the owner of the premises to be sold in particular—as in (5), above, the purchaser will have to be satisfied that the service was properly effected, and that the correct person was chosen as "owner."

(9) The clerk should also include in his declaration a statement that no objection was made to the final apportionment—or that, if such an objection was made, it was withdrawn or properly disposed of by the magistrates.

(10) It will then have to be established—in the clerk's declaration—that the whole of the charge—or where payable by instalments (and in this event the resolution of the local authority to that effect will also have to be included in the abstract and proved) that one instalment—has been outstanding for at least three months, or that interest on the charge (at the appropriate rate) has been in arrear for at least two months, and in the former case it will also have to be proved that a proper demand for payment thereof was duly served on some named person whom the purchaser must be satisfied was then the owner (within the meaning of the Act) for the time being of the premises to be sold (see Private Street Works Act, 1892, s. 13).

The importance of these facts and events all being properly alleged and established cannot be over-emphasised, as otherwise the purchaser will not acquire a valid title. In a case of a sale under the Public Health Act, 1875, or under a corresponding local Act, however, the details set out above will require some modification. In particular it will have to be established in the abstract—and verified by production of the register—that the charge has been registered in the local land charges register, and it is submitted that registration must have been effected prior to, or contemporaneously with, service of the demand for payment; for until registration, the three months (or two months) referred to in s. 103 of the Law of Property Act, 1925, cannot commence to run.

In some cases the local authority may choose to proceed to enforce their charge by way of foreclosure, this being one of the normal remedies of a mortgagee under a deed created by way of legal mortgage. Normally the amount outstanding will be small enough to bring the case within the jurisdiction of the local county court (£500; County Courts Act, 1934, s. 52 (1) (*c*); County Court Rules, 1936, Ord. 2, r. 2). This procedure will most commonly be adopted in practice where the premises consist of vacant land, and the local authority decide they can best realise the value of their security by acquiring the land and using it themselves, e.g., by erecting a house or houses thereon under the Housing Acts, 1936–52. If the local authority subsequently decide to sell the land, or any portion thereof, their title will commence with the foreclosure decree absolute, and it will not be necessary to establish any of the facts and events relating to the implementation of the appropriate private street works legislation.

J. F. G.

WARRANTIES ON THE SALE OF A MOTOR CAR

THE exclusion of liabilities on the seller arising under a contract of sale of a motor car was considered in an article at p. 298, *ante*, and it may now be profitable to examine the effect of, and in particular some of the words commonly used in, warranties given on such a sale.

Meaning of "Reconditioned"

The importance on the sale of a motor car, particularly where it is secondhand, of using strict terms in a warranty which bear a natural and commonly understood meaning was emphasised afresh in a case tried recently by McNair, J., who had to consider the meaning of the words "reconditioned throughout" contained in an express warranty on a sale of a secondhand motor car. Before, however, setting out the report of the case, which unfortunately is a very meagre one, it may be helpful to see what are the authorities which bear upon the subject.

Recently in *Minster Trust, Ltd.* v. *Traps Tractors, Ltd.* [1954] 1 W.L.R. 963; 98 SOL. J. 456, Devlin, J., gave a definition of the words "fully recondition" and "reconditioned" as used in a certificate of inspection and report of certain plant and machinery issued by a firm of consultant engineers whom the seller had instructed to act on his behalf. The plant and machinery had been sold by the defendant to the plaintiffs subject to a certificate that they had been fully reconditioned to the satisfaction of the consultant engineers; but, the reconditioning proving unsatisfactory, the plaintiff buyers claimed damages against the defendant seller for breach of contract.

Of the meaning of the word "reconditioned," the learned judge says: "It obviously means 'to put back into condition,' not of course into brand-new condition, but to renew the machine in the sense of giving it a new lease of life. It means more than overhauling or repairing. In any machine there are some parts which are intended to last as long as the machine itself lasts, and the other parts have a shorter life and need to be renewed from time to time. Reconditioning requires, I think, that the machine should be thoroughly examined—usually that means 'stripping down'—to see what renewable parts are worn, and all such parts which are substantially worn should be renewed. To insist that every slightly used part should be scrapped would be absurd. But any part that is left must, I think, have most of its life still in front of it, so that the machine as a whole is given, as I say, a new lease of life." And of the words "fully reconditioned" he says: "The term is said by the plaintiffs to have a meaning that is well understood in the trade, as distinct from 'reconditioned' *simpliciter*, which some witnesses thought was meaningless. I do not think there is strong enough evidence to establish for 'fully reconditioned' a trade meaning in the strict sense, but also I do not think that its meaning as understood in the trade is really any different from its natural and popular meaning . . . I do not think that 'fully' adds much to 'reconditioned,' but it does add something. The reason why 'reconditioned' by itself is distrusted in the trade is, I think, because the word has been seized upon by people who smarten up a machine with a new coat of paint and sell it as reconditioned. 'Fully' is thought necessary to exclude that practice. In truth, I think that if a machine was sold as 'reconditioned' without qualification, it would not be enough to prove that part of it was reconditioned. But I can see that qualifications might be implied. If, for example, a car was sold as 'reconditioned,' it might be suggested that the term was intended to apply only to the engine, or something of that sort. The advantage of 'fully' is that it expressly excludes qualifications of this sort. I am satisfied, therefore, that there is a difference which is thought in the trade to be important, and that a certificate of reconditioning *simpliciter* is not acceptable in a contract which calls for full reconditioning."

These observations were recently adopted and applied by McNair, J., in a case (not reported by name) noted in *The Times*, 23rd March, 1955, in considering a claim for breach of warranty in respect of a sale of a secondhand motor car advertised as "a

vehicle reconditioned throughout." His lordship said that there was evidence of the loose use of the word "reconditioned" in the secondhand motor trade. If people continued to use that as a loose phrase to cover up an overhaul which was short of reconditioning, they had to expect to get into trouble.

Warranty of a "New Car"

It will be remembered that a similar point of construction arose in connection with the sale under a warranty of a "new car" in *Andrews Brothers (Bournemouth), Ltd.* v. *Singer & Co., Ltd.* [1934] 1 K.B. 17. There there was an express warranty to sell and deliver a "new Singer car," which was held not to have been satisfied by the sale and delivery of a Singer car which had been run a very considerable mileage. It appeared that before the purchase of the car by the plaintiffs the car had been sent to another town to be shown to a prospective customer, but, as he did not buy it, it was driven back to the makers where it was adjusted, and it was, at the time of the sale to the plaintiffs, as was found by Goddard, J., in his judgment, in good mechanical condition. The plaintiffs, however, alleged that by reason of what had taken place the car was not a "new car" and the learned judge held (and there was no appeal on this point) that the car was not a new car when sold to the plaintiffs, and that the defendants were under an obligation to sell and deliver a new car under their warranty.

It may be noted that in *Anderson* v. *Scrutton* [1934] S.A.S.R. 10, it was held by Napier, J., in reversing a decision of the special magistrate from the Local Court of Adelaide, that the sale of an engine which was warranted as "a *new* 7 h.p. Hercules Kero engine" was not fulfilled by the sale of an "unused" 7 h.p. Hercules Kero engine which had been imported from America at least eight years before the sale was made, and had been held in stock until it was taken out of the case in which it had been imported, and was "unused" when it was delivered. In his judgment he says: "It is always difficult to define the simple words of common use; but I think that the primary meaning of 'new' is 'not old' or 'of recent origin,' and I think that the onus is upon those who contend that a word like this is used in a secondary sense to show that it was so intended. 'New' and 'old' are relative terms, but it seems to me that there are various ways in which an article of commerce may lose the quality of newness. A thing is no longer 'new' when it has been used for a comparatively short period—*Andrews Brothers (Bournemouth), Ltd.* v. *Singer & Co., Ltd.* [1934] 1 K.B. 17—but when things become old they are no longer new, and if the mere lapse of time results in deterioration in quality, or depreciation in value, I think that the thing is no longer new according to the ordinary use of the English language. I have no doubt that it might be possible to show by a reference to the context or the subject matter that 'new' means 'unused' and nothing else . . ." Again, in *Brown* v. *Sheen Richmond Car Sales, Ltd.* [1950] 1 All E.R. 1102, it was held that an action lay for damages for breach of warranty where a car was advertised for sale as being in perfect condition, and where the defendants' sales manager had told the plaintiff that it was in perfect condition and was "good for thousands of trouble-free miles." There the plaintiff found the car not in satisfactory condition, and was obliged to have carried out a number of repairs to it, at a cost of £60 or £70, to put it into proper roadworthy condition.

The importance of a strict compliance with such a warranty is well illustrated by a case with which the writer of the present article was concerned to which it may be of interest to refer. There a car, which had been bought by a garage firm, was advertised for sale by them in a motor journal as being "as good as new." Unfortunately, however, unknown to the firm there had been a slight mishap to the bonnet of the car which had been blown off by the wind during a drive. The bonnet had been straightened out and refitted, but this did show signs when carefully examined of having been repainted a slightly different colour. The fact of this mishap had not been mentioned by the previous owner when he sold it to the garage firm, as he did not think if of any importance, and no question had been asked of him at the time which would have discovered it. The above advertisement of the car in the journal was therefore inserted quite innocently. The advertisement was then seen by a would-be purchaser who, together with another garage firm, came to see the car at the premises of the first garage firm, and on the strength of the warranty the would-be purchaser agreed to buy the car. The sale, however, was not made direct to him by the first garage firm, but they sold it to the second garage firm, who then agreed to sell it to him on hire-purchase, or instalment, terms. A claim was subsequently made by this purchaser against the first garage firm for damages for breach of warranty upon the ground that the car was not "as good as new" by reason of the mishap to the bonnet, and by the difference in the colouring of the paint work. In view of the above cases as regards the meaning in the warranty of the words in question a settlement was arrived at.

The Parties to the Warranty

It will have been seen that in the above case there was no direct privity of contract between the first garage firm and the ultimate purchaser of the car, the sale of the car not having been made direct to him by the givers of the warranty. An examination of the cases shows, however, that it was not necessary, in order that the ultimate purchaser might enforce the terms of the express warranty against the first garage firm, that this express warranty should have formed part of the sale of the car to him by the second garage firm. The cases show that it would be sufficient to support his claim if he could show that, as a result of the express warranty which had been given to him by the first garage firm, he had been induced to enter into the contract for the sale of the car to him by the second garage firm after they had bought the car from the first garage firm for this purpose.

In a large number of cases in which cars form the subject of a hire-purchase agreement with a finance company the arrangement between the would-be purchaser and the dealer is one under which the dealer purports to sell the car to the finance company, and the finance company then purports to let the car on hire-purchase to the would-be purchaser; the first payment by way of a deposit being paid to the dealer. The property in the car thus passes from the dealer to the finance company upon the payment by them to the dealer of the balance of the purchase price for the car which the dealer is asking, and the company then let out the car on hire-purchase to the would-be purchaser, to whom after the payment of the necessary instalments the property in the car ultimately will pass. It is, of course, always a question of fact, in the light of the documents, as to what the transaction in any particular case in fact is; but, where the finance company purchase the car from the dealer and let the car out on hire purchase to the would-be purchaser, the true transaction *vis-à-vis* the dealer and the would-be purchaser is not one of sale (see *per* Goddard, L.J., in *Menzies* v. *United Finance Corporation* [1940] 1 K.B. 559, as explained by him in *Drury* v. *Buckland, Ltd.* [1941] 1 All E.R. 269).

Implied Warranty of Fitness

Where therefore the transaction between the would-be purchaser and the dealer is not one of sale, but the transaction

is one of hire-purchase as set out above between the would-be purchaser and the finance company who have bought the car from the dealer, it was held in *Drury* v. *Buckland, Ltd.*, that, inasmuch as there was no sale by the dealer to the would-be purchaser, the dealer was not liable to the would-be purchaser for the breach of an implied warranty of fitness under s. 14 of the Sale of Goods Act, 1893.

Express Warranty of Fitness

Even where, however, the transaction between the would-be purchaser and the dealer is not one of sale, but the transaction is one of hire-purchase as set out above between the would-be purchaser and the finance company who have bought the car from the dealer, yet if the dealer gives to the would-be purchaser an express warranty as to the fitness of the car by way of an inducement to him to enter into the transaction of hire-purchase with the finance company in order to enable him to purchase the car from the finance company to whom he (the dealer) is to sell the car, and the would-be purchaser is so induced, the dealer will be liable to the would-be purchaser for breach of such express warranty of fitness. Thus, in *Brown's* case, above, a purchaser, acting on the representations by the dealers as regards the fitness of the car as stated above, paid a deposit to the dealers, and, in respect of the balance of the purchase price, entered into a hire-purchase agreement with the finance company to whom the dealers had sold the car for the balance of the purchase price, under which the car was let to him by them on hire-purchase terms. The purchaser duly paid all the instalments due under the hire-purchase agreement, and the property in the car then passed to him. The car was not, however, in perfect condition, and the purchaser was compelled to have a number of repairs done to it. In an action brought by the purchaser against the dealers for damages for breach of warranty it was held by Jones, J., that the dealers were liable under their express warranty, *Drury's* case being distinguished upon the ground that in that case there was no sale by the dealer to which the warranty implied by the Act could attach, whereas in the case then before the court the purchaser relied, not upon such warranty implied by the Act upon a sale, but upon the express warranty made to him by the dealers upon the strength of which he was induced to enter into the hire-purchase agreement for the payment of the balance of the purchase price. The principle of *Brown's* case has since been followed by McNair, J., in *Shanklin Pier, Ltd.* v. *Detel Products, Ltd.* [1951] 2 K.B. 854, who held that the sellers of a certain article (the defendants) were liable in damages to the plaintiffs for the breach of an express warranty given by them to the plaintiffs who, in consideration of the express warranty, had caused a third party to purchase the goods so warranted, and who had suffered damage by reason of the breach of the express warranty.

There the plaintiffs, who were the owners of a pier, had entered into a contract with certain contractors to have some necessary repairs done to the pier and to have the whole pier repainted with two coats of bitumastic or bituminous paint, but they had a right to vary the specification. A director of the defendant's company, who were sellers of paint, as a result of an inquiry by the plaintiffs saw the managing director of the plaintiff company and gave to him an express oral warranty as regards the fitness and durability of a certain kind of paint. On the faith of this express oral warranty the plaintiffs caused the specification in their contract with the contractors to be amended by the substitution of two coats of the particular kind of paint the subject of the express warranty. This particular kind of paint was then bought by the contractors from the defendants, and applied by the contractors to the pier, but it proved to be unsatisfactory and lasted only for a very short period, much less than the period stated in the express oral warranty. In giving judgment for the plaintiffs, the learned judge described the case as raising an interesting and comparatively novel question whether or not an enforceable warranty can arise as between parties other than parties to the main contract for the sale of the article in respect of which the warranty is alleged to have been given. In holding that an enforceable warranty can so arise, he said: "Counsel for the defendants submitted that in law a warranty could give rise to no enforceable cause of action except between the same parties as the parties to the main contract in relation to which the warranty was given. In principle this submission seems to me to be unsound. If, as is elementary, the consideration for the warranty in the usual case is the entering into of the main contract in relation to which the warranty is given, I see no reason why there may not be an enforceable warranty between *A* and *B* supported by the consideration that *B* should cause *C* to enter into a contract with *A* or that *B* should do some other act for the benefit of *A*."

M. H. L.

A Conveyancer's Diary

REPORT OF THE ROYAL COMMISSION ON TAXATION OF INCOME—II

After charities, the matter of most interest to the conveyancer examined in the Commission's Report is that of covenants as transfers of income. As matters stand to-day, the report states, voluntary annual payments secured by deed of covenant are recognised as transfers of income, but subject to a fairly elaborate network of conditions which limit their recognition. These conditions are categorised under three heads. First is the condition that the covenant must be sufficiently durable in form and time in order to rank as a transfer of income for this purpose. No covenant can qualify unless the money is payable to or applicable for the benefit of another person for a period which is capable of exceeding six years; and no covenant can qualify if it is revocable, within the very wide definition of revocability which was introduced by the Finance Act, 1938. Second is the condition that the destination of the money paid must be so secured that no part of it can come back, directly or indirectly, to the benefit of the payer himself. Numerous conditions have been imposed with the general intention of countering avoidance by some device under which the income does not really leave the ostensible transferor. For instance, a covenant cannot qualify if it is in favour of the child of the covenantor and at the beginning of the relevant income tax year the child was an infant and unmarried; or, to take another instance, a covenant entered into in favour of any individual in the service of the covenantor is not allowable as a deduction in computing the covenantor's total income for the purposes of sur-tax. The purpose of this last restriction is to prevent what is in reality remuneration for services rendered masquerading as a voluntary annuity. Last is the condition which operates as a limitation on the

power of an individual to make transfers of his income by covenant in the general interest of the yield of revenue. This is the heading under which the Commission categorise the provision introduced in 1946 to the effect that income payable under covenants entered into after the 6th April, 1946, in favour of charities or corporate bodies is not to be deducted from the covenantor's income for purposes of sur-tax.

The review of covenants made in the report raises, in the Commission's view, two questions. The first is: Ought such instruments to be recognised at all for the purpose of transferring income? The second is: Are the present limiting conditions adequate or satisfactory? To the first question, the Commission's answer is a simple "Yes." On the other question, the Commission asked the Board of Inland Revenue to survey the question for them and to make any further proposals that their experience of the matter suggested to be necessary. The conclusion of the Board was that, although this sort of question had to be kept under constant review, it was not necessary at the present time to propose any further conditions.

The Commission decided, however, in the light of the information given to them by the Board, to recommend two measures. The first concerns covenants for the purpose of discretionary trusts. Under this type of deed, a covenant is made with trustees who are given the duty of distributing the annual payments that they receive among any one or more of a number of named beneficiaries and in such shares as they may decide. Sometimes the named beneficiaries are charities; sometimes named individuals; sometimes both classes are included. The Commission presume that the main attraction of a covenant in this form is that the covenantor is able to keep an effective voice in the destination of the income each year as between one beneficiary and another, assuming that the trustees whom he has chosen are prepared to consult him as to the exercise of their discretion.

The Commission think that a disposition of this kind ought not to be allowed to rank for tax purposes. It achieves what is required for an effective transfer of income (which is the whole justification for treating payments made under covenant as the income of the recipient and not the income of the covenantor for tax purposes) in the sense that the whole income is alienated from the covenantor, without any benefit being retained for himself. But it fails to secure another thing which is, in the Commission's view, implicit in the idea of a genuine transfer of income when effected by annual payments under covenant, that the income in question becomes the genuine income of someone else. The Commission's recommendation is that statutory provision be made for ensuring that payments under such a deed should not be regarded as deductions from the income of the covenantor or as taxable income of the recipients. The Commission add that care will have to be taken in the drafting of any such provision to see that it does not go further than the mischief of the case requires (this rider is typical of the Commission's attitude to recent financial legislation, a matter on which there will be more to be said next week). A saving in favour of a genuine protected life interest, for example, is recommended.

The other recommendation that the Commission wish to make relates to covenants for annual payments to relatives of the covenantor. At present, the only control over these is a provision that disqualifies covenants in favour of an unmarried child under twenty-one. Covenants in favour of adult children or other relatives were in use long before they attained any particular significance for the purposes of tax, and even under present conditions the Commission see no public advantage in discouraging them. But at the same time, it is pointed out, the very circumstances of the family connection make it possible for abuses of the system to grow up and for covenants which satisfy all the legal requirements of a transfer of income to cover up private understandings by virtue of which the benefit of the income never really leaves, or is somehow returned to, the covenantor.

The Commission feel little doubt that a number of such understandings do exist and that they are no better than a fraud on the system. The Commission do not, however, propose on that account to recommend a ban on such covenants altogether: to do so would be to discriminate against the innocent in order to arrest what may be comparatively few guilty persons. The recommendation of the Commission is, therefore, for a procedural, not a substantial, change. It is that every person who makes a claim for a deduction of annual payments from his total income for tax purposes on the ground that they are made under a covenant in favour of another individual should be required by statute, if that individual is a child, grandchild, or other member of the covenantor's family, to produce formal declarations made by himself and by the recipient of the payments to the effect that there exists no agreement or understanding, whether or not regarded as having legal force, by virtue of which the benefit of any part of the payments is returned directly or indirectly to the covenantor or any other person designated by him.

Payments received by way of compensation for loss of office form the subject of another chapter of the report. The payments the Commission have in mind are not retirement benefits, but payments made to a person, whether by way of damages after legal action or without legal action, (*a*) by reason of his ceasing to hold an office or contractual post; (*b*) whatever the circumstances in which the termination has come about, even if they amount to no more than his voluntary resignation; (*c*) if the payments are in any sense a compensation for losing the profits of the office or post. Normally, the report says, compensation is only paid if the loss comes about through some act other than the recipient's resignation. But a number of actual cases of which the Board of Inland Revenue informed, the Commission satisfied the Commission that very large sums are sometimes paid to persons by way of compensation even when they lose nothing that they could not have retained, if they had wished, or when the only cause of their loss is their own disqualification by ill-health from doing their work. Contractual rights are created in order to be lost. Such cases, in the Commission's view, would have to be dealt with in some form. In practice, it would be exceedingly difficult to distinguish them from the many genuine cases which do depend on a real frustration of expected income. The question is, therefore, whether even in such cases the principle is valid which treats compensation payments as not being income.

The Commission's conclusion is that this is not a sound principle. The money received for compensation for loss of office is directly related to the income which would have accrued if the individual had rendered his services, and is comparable, though on a larger scale, with a payment in lieu of notice, a receipt which should certainly be regarded as taxable. The recommendation therefore is that payments by way of compensation for loss of office should henceforth be treated as taxable income, as follows: (1) One-quarter of the sum, not exceeding £2,000, should be tax free; (2) the non-exempted part should be charged to tax by "top-slicing"

by reference to a period of five years; and (3) ordinary remuneration in the year of receipt should not be taken into account for the purpose of the "top-slicing."

A somewhat similar problem dealt with in the report is that of post-cessation receipts in the case of those persons whose profits are computed on the cash basis and not on an earnings basis (the outstanding case of this kind is that of the Bar). At present, in such cases moneys earned but not paid at the date when the profession is discontinued do not come under charge to tax. The Commission do not think that it would be wrong in principle to extend the tax charge on post-cessation receipts to the receipts of a person whose profits are computed on a cash basis: but they do not think that it would be just to recommend such an extension of taxation except as part of a system which included the extension of tax reliefs in respect of retirement benefits to the self-employed. In this connection, the Commission endorse the recommendations of the Second Tucker Committee.

Another problem of great interest to the professional man, that of the taxation of unincorporated businesses, is considered at length in the report. I will return to this subject next week in the last of these articles on this report. "A B C"

Landlord and Tenant Notebook

CONTROL: FIRST ASSESSMENT OF SUB-DIVIDED FLATS

WHETHER a dwelling-house is one to which the Rent and Mortgage Interest Restrictions Act, 1939, applies depends on whether its rateable value on the appropriate day did or did not exceed, in the metropolitan police district, £100 (s. 3 (1) (*a*)); the rateable value on the appropriate day is, in the administrative county of London, the value shown in the valuation list in force on 6th April, 1939, as its rateable value (*ibid.*, s. 7 (1)); if a dwelling-house was not separately assessed on that day, its rateable value is to be taken to be such proportion of the then rateable value of the property in which it is comprised as may be apportioned to it by the county court in accordance with the provisions of the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (3) (*ibid.*, s. 7 (2)); if a dwelling-house was first assessed after 6th April, 1939, the appropriate day is the day on which it was first assessed (*ibid.*, s. 7 (3)).

The problem which confronted the court in *Temple* v. *National Mutual Life Assurance of Australasia, Ltd.* [1955] 3 W.L.R. 264 (C.A.); *ante*, p. 489, may be viewed as a question whether s. 7 (2) (the separate assessment provisions) or s. 7 (3) (the first assessment provisions) governed the following situation.

A block of flats was built on a site in the metropolitan police area and the administrative county of London in the year 1934. The flats varied in size and in 1935 a tenant took two adjoining ones, which I will call the large flat and the small flat, and made them into one. The dwelling-house so constituted became a hereditament rated at £147 and was so rated on 6th April, 1939, and was therefore not affected by the enactment of the Rent, etc., Restrictions Act, 1939.

This tenant left at Lady Day, 1940, whereupon the flats were separated, and next year they were separately assessed: the large flat at £95, the small one at £34. The large one was let to a tenant who, in the proceedings, applied for a determination of its standard rent (Rent, etc., Restrictions Act, 1923, s. 11 (1)), herself contending that the Act of 1939 applied because the flat was "first assessed" in 1941, and so assessed at a figure which did not exceed £100. The respondents' contention was that the flat was one which had not been separately assessed on 6th April, 1939, so that its rateable value must be an apportioned amount of £147. The deputy county court judge agreed, and made the amount £108, leaving the property outside the Act.

The appeal was dismissed, but the question is perhaps not so straightforward as it appears to be. The appellant cited *R. & P. Properties, Ltd.* v. *Baldwin* [1939] 1 K.B. 461 (C.A.). This was in fact a case in which two dwellings had been made into one, and the resulting one dwelling was treated as if nothing had happened. But the essential question (though it did not reach the Court of Appeal till December, 1939) was whether that resulting one dwelling was within or outside the control provisions of the Act of 1920; for the combination had taken place in 1935, after the decontrol provisions of the Rent, etc., Restrictions (Amendment) Act, 1933, had come into force. It was held that the then letting was the first letting of the whole as a separate dwelling-house; consequently, the Acts did not apply, and a notice to quit which had expired on a date in 1938 was effective.

Such a decision could throw very little light on the question whether the large flat was first assessed in 1941 or whether it was comprised in a dwelling-house which had been assessed on 6th April, 1939. And it was countered by observations made in *Capital and Provincial Property Trust, Ltd.* v. *Rice* [1952] A.C. 142, which decided a question of the right to apportionment. Adjacent flats had been made one dwelling by cutting a communicating door in February, 1939, the property being let by a single lease; it suffered war damage and one flat was repaired and let separately in 1942, the other in 1946. The flats were (or had been) identical in size; the rent reserved in 1939 was £342 10s. and the rateable value of the property was over £100; the one let in 1942 was let at £195, the tenant of the other paid £250, and each was rated at £79. The tenant of the £250 flat issued a summons asking for apportionment of the £342 10s. in order to ascertain his standard rent, and the landlords, perhaps somewhat unnecessarily, issued a cross-summons asking for a determination of the standard rent. Their contention was that 1946 was the first letting for the purpose in hand, "standard rent" being *prima facie* the rent at which the dwelling-house was let on 1st September, 1939 (Act of 1920, s. 12 (1); Act of 1939, Sched. I). Not without expressing diffidence, Lord Porter reached the conclusion that the time as at which a court is asked to apportion rent is the time when it was let as a separate dwelling. The flat had been let as a separate dwelling when the applicant issued proceedings; the flat had been let on 1st September, 1939.

The diffidence is understandable when one recalls Scrutton, L.J.'s "the Act runs round in a useless circle," on his pointing out, in *Barrett and Evans* v. *Hardy Bros. (Alnwick), Ltd.* [1925] 2 K.B. 220, that a court is told to determine the standard rent of a house to which the Act applies, and finds that it cannot say whether the Act applies till the standard rent has been determined! This authority, among many, was cited by both sides in *Capital and Provincial Property Trust, Ltd.* v. *Rice*. In fact, counsel for the landlords cited sixteen decisions in all, the tenant, who appeared in person, only fifteen—but the tenant also referred to a number of publications, and these included one written by counsel for the landlords.

While this disposed of the point based on *R. & P. Properties, Ltd.* v. *Baldwin*, there was a more recent authority, *R.* v. *Sidmouth Rent Tribunal; ex parte Sellek* [1951] 1 K.B.

778, which was said to provide some support for the respondents in *Temple* v. *National Mutual Life Assurance of Australasia, Ltd.* But a decision of a Divisional Court does not bind the Court of Appeal, and this enabled Denning, L.J., to say that if that case were not justified on its special facts on the ground that conversion had produced a new entity he did not agree with it. The facts were that a house rated on the appropriate day at £70 had been converted into four flats in 1947; one of these was separately assessed at £80; when the Landlord and Tenant (Rent Control) Act, 1949, was passed, the tenant sought to avail himself of the right to have the question what rent was reasonable determined by a tribunal; which meant that he had to show that the standard rent was either the rent at which the flat was let on a letting beginning after 1st September, 1939, or an amount ascertainable by apportionment of the rent of comprising property let after that date. Thus arose the question whether s. 7 (2) or s. 7 (3) of the Act of 1939 governed the situation. But what actually defeated the tenant's application was that s. 7 (2), the provisions of which were summarised in my opening paragraph, insists on the apportionment being carried out by the county court: "such proportion . . . as may be apportioned to the dwelling-house by the county court in accordance with the provisions of, etc." Parker, J., said that "as may be apportioned" must read "as shall be apportioned"; Goddard, C.J., pointed out that it would be wrong even to assume that such apportionment would be made, as the county court judge might find that a "new entity" had been created. At all events, the effect was that the respondent tribunal had no jurisdiction to entertain the application. I confess that I cannot understand why Denning, L.J., expressed his disagreement with this result; in the case before the court the question was whether apportionment had to be resorted to at all.

R. B.

HERE AND THERE

VACATION LULL

WITH the end of August we have reached the very doldrums of the Long Vacation. If High Court activity was synonymous with professional activity, unemployment among the lawyers would be very nearly a hundred per cent. On the evident assumption that this is so, the law libraries have been working either short hours or not at all. In the Royal Courts of Justice the court corridors present long vistas of silence, gothically suggestive of monastic contemplation. In a world which obviously hates and fears silence, it is a wonder that whatever athletic associations flourish among the staff have not yet sought and received permission to use them for roller-skating, hurdling or sprinting practice. If inconsequence were the only objection, it would be hardly more inconsequent than that strange annual blossoming of the Central Hall, just before the closing of the courts, when the Supreme Court Horticultural Society fills it with the spirit of a harvest festival or village fête, with flowers, fruit, vegetables, cakes and jams adorning the close of another legal year. In the ensuing solitude, the Vacation judge, the last judge of summer left blooming alone, barely maintains the rights of the lawyers to use the building at all, for now the Office of Works men come into what they never cease to regard as their own. For them, the building is, in the utmost concession they can make, a branch of the Office of Works, with litigation as an ancillary activity. For most of the year they live in little-known and almost inaccessible underground passages, unobtrusively maintaining the fabric of the place. For them judges and officials and staff are, for the most part, rather pernickety intruders, whose officious demands and criticisms and unreasonable obstructions must be coped with tactfully and skilfully and who must, as far as possible, be dissuaded from interfering in matters which they do not understand. But when the corridors are empty and the wigs withdrawn, then they take possession, like a subterranean river flooding, oozing and gushing up to the surface. At last they can get on unhampered with some serious work. For the rest, the Central Hall mostly spends its summer in the character of a national monument and magnet of the tourist industry. Foreigners sometimes mistake this building for a church, which is not unintelligent, since it was designed by a distinguished ecclesiastical architect, who seems to have seen it rather as a place of worship than of contention. Still, the visitors are usually favourably impressed. The uniformed attendants may be seen and heard giving them points of interest in the usual guide-voice *recitative*. I don't know whether they tell Italians that the Hall is after (some way after) the Upper Church at Assisi, less the Giottos, of course. They might also like to tell Germans that a lot of it was put up by German labour during a strike of English workmen.

UNBRACED

IN this period of suspended animation the journalists and newspaper editors must find most of the drama that they have trained their public to expect elsewhere than in the conveniently predigested form of court proceedings. It is as if cooks, accustomed to finding great quantities of their ingredients in tins and packets, were suddenly deprived of them and thrown back entirely on natural unprocessed foods. They would start combing the smaller shops of the East End and the suburbs for stray surviving tins. So the journalists are looking more attentively at the smaller remoter courts, and what they find is occasionally rewarding—the case of the adjournment for braces, for example. It was at Wimbledon, and a youth charged with wandering and lodging in the open entered the dock holding his hands around the top of his trousers. At Wimbledon the older generation still believe in deportment, and the chairman briskly told him to "stand to attention." The youth jumped obediently into the correct attitude. Down went his hands to his sides and down went his trousers to his knees, since, like their wearer, they apparently lacked visible means of support. So, though he was standing to attention, there could in the circumstances be no question of "right dress." He was hastily permitted to stand easy again, though, perhaps, hardly at ease, and the case adjourned while the police set about finding a pair of braces. Thus reinforced, the accused was remanded on bail. It is a wonder the police had not noticed the deficiency before they actually presented their man in court, for I always understood that the classic way of preventing, or at any rate making difficult, any attempt at escape was to confiscate your prisoner's belt or braces. Few exercises in deportment are more exacting than to walk with an easy nonchalance or to run with any appreciable speed while at the same time holding up a descending pair of trousers. Slowness and conspicuousness are both ensured. The only alternative device is to take them off altogether and, like the escaping convict in René Clair's *A Nous la Liberté*, rely on underpants and vest to get you mistaken for a competitor in a long-distance race. But not every man would have the stroke of genius to see that the answer to being imprisoned in his own clothes was to escape from them and leap into another character. Most men are no more than their braces. If they lose them they disintegrate.

RICHARD ROE.

BOOKS RECEIVED

Show Business and the Law. By E. R. HARDY IVAMY, LL.B., Ph.D., of the Middle Temple, Barrister-at-Law, Lecturer in Laws, University College, London. 1955. pp. x and (with Index) 188. London: Stevens & Sons, Ltd. £1 5s. net.

"Special Reasons." Third Edition. By W. E. BLAKE CARN, Solicitor, Clerk to the Justices for the City of Leicester. 1955. pp. 72. London: Shaw & Sons, Ltd. 7s. net.

Jurisprudence. By G. B. J. HUGHES, M.A., LL.B., Lecturer in Law at the University of Hull. 1955. pp. xxx and (with Index) 544. London: Butterworth & Co. (Publishers), Ltd. £1 17s. 6d. net.

Emmet's Notes on Perusing Titles and on Practical Conveyancing, Vol. I. Fourteenth Edition, in Two Volumes. By J. GILCHRIST SMITH, LL.M., Solicitor (Honours), Deputy Town Clerk, County Borough of Middlesbrough. 1955. pp. xcix and (with Index) 686. London: The Solicitors' Law Stationery Society, Ltd. £4 net.

A Handbook of the Law relating to Landlord and Tenant. By the late Benaiah W. Adkin. Fourteenth Edition, by RAYMOND WALTON, of Lincoln's Inn, Barrister-at-Law. 1955. pp. xxxii and (with Index) 780. London: The Estates Gazette, Ltd. £2 7s. 6d. net.

Chitty's Mercantile Contracts, based on the second volume of Chitty on Contracts. Edited by BARRY CHEDLOW, of the Middle Temple, Barrister-at-Law. 1955. pp. lx and (with Index) 674. London: Sweet & Maxwell, Ltd. £2 15s. net.

Ranking, Spicer and Pegler's The Rights and Duties of Liquidators, Trustees and Receivers. Twenty-second Edition, by H. A. R. J. WILSON, F.C.A., F.S.A.A., and R. D. PENFOLD, LL.B., of Lincoln's Inn, Barrister-at-Law. 1955. pp. xl and (with Index) 462. London: H.F.L. (Publishers), Ltd. £1 5s. net.

***Mens Rea* in Statutory Offences.** English Studies in Criminal Science No. VIII. By J. Ll. J. EDWARDS, M.A., LL.B., Ph.D., of the Middle Temple, Barrister-at-Law, Reader in Law in the Queen's University of Belfast. 1955. pp. xiv and (with Indices) 298. London: Macmillan & Co., Ltd. New York: St. Martin's Press. £1 1s. net.

Konstam on Income Tax. Cumulative Supplement to the Twelfth Edition. 1955. pp. xiv and (with Index) 82. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 7s. 6d. net.

Buying or Selling Your House. *Daily Mail* Ideal Home Series No. 1. Edited by ADAM WYKES. 1955. pp. 112. London: Associated Newspapers, Ltd. 2s. 6d. net.

Country Practice

GENUINE ANTIQUES

THE coming of the steam train was the beginning of the end of country practices, so it was thought, enabling a country client to visit a town solicitor quickly and cheaply. Lord Nuffield ended what George Stephenson began when he added the benefits of automobiles to those of locomotives. In fact, the rustic legal moralist has been listening to the tolling of the knell of country practices for a century or more as clients are transported, or transport themselves, to the modern city office at the centre of things.

A more cheerful note was rung on the telephone bell by the late Mr. Edison, and some born optimists still consider that a rural practice is capable of as much useful work as the city practice. Still, one must admit that more clients say "Dickens!" on first entering a country office than they do on meeting the olive-green steel furniture of the city firm.

One must not generalise too much about furniture and office appliances; even in towns I have come across some rare antiques. There was the office where they had a Yost typewriter. You press button B, and a portion of type rises convulsively from an inky pad, changes its mind in mid air, and lunges forward to inflict a telling imprint on the quivering paper. The paper then feints to the left as B retires, only to fall forward flat on its face on the ink pad again. I don't know Mr. Yost personally, but he, or his grandchildren, may like to know that his machine is still operating powerfully.

You can also still come across offices where the hand-operated copying press remains visible—it is generally to be seen, in retirement, on top of the office safe. The legal profession can show some fine examples of early safes, too. Safes, however, never wear out; even in the most thorough modernisation, whether in town or country, the safe stays where it is.

The odd thing about the country practice is the library. In towns, old law books are taken away and shredded up to make children's shoes, breakfast foods and the like. In the country, few rural district councils operate salvage schemes, and fewer still seem to welcome a load of law when the refuse is collected. In any case, storage space isn't difficult to obtain; and there is always the market day office.

The market day office is the suite of two or three rooms occupied on only one afternoon per week. Here one meets clients from the very fringe of one's territory; one can even, sometimes, snap up an ill-considered former client of one's rival. (The rival has a little office too, open only once a week, in one's own central stamping ground.) The part-time office is ideal for the storage of old books. I can point to a 1901 "Stone" and an annotated copy of the Bankruptcy Act, 1883. These are not much used nowadays, but "Stone"—a richer blue than obtains at present—brightens up the place. Prideaux's Precedents, 10th Edition, is an imposing sight, and so is Renton's Encyclopædia of the Laws of England (1897), volumes 1 to 9—"Abandonment" to "Peel Acts." (This week's quiz: Peel Acts had something to do with (*a*) the formation of a county constabulary; (*b*) the regulation of new parishes in the Industrial Revolution; or (*c*) the provision of fortifications along the Scottish border. No prize.)

The old volumes are sometimes of use, however. Modern text-books tend to classify as obsolete huge tracts of property law which, in country offices, are merely obsolescent. We are now thirty years distant from the passing of the legislation which rendered copyhold tenure non-existent. And yet—this is perfectly true—I have in recent months had to consider what a woman's rights were respecting her copyhold land on being married in 1869; to deal with requisitions on title inquiring what were dolts and doles; and to convey, hoping for the best, land, the tenure of which was described as churchgift. Modern practice books are silent, but a quiet market day's visit to our sub-office and a browse through an early edition of "Scriven" can be rewarding.

If there is one thing I grudge the town solicitor, it is his comparative freedom from knotty titles of ex-copyhold land. However, if British Railways and the internal combustion engine are still helping to spread the burden, I am all in favour of progress.

HIGHFIELD.

ESTATE DUTY IN RESPECT OF TIMBER STANDING ON SETTLED LAND

THE abandonment of a long-standing practice of the Estate Duty Office in dealing with duty on timber is announced by the Board of Inland Revenue in the following statement issued on 25th August: Section 61 (5) of the Finance (1909–10) Act, 1910, as amended by s. 9 of the Finance Act, 1912, provides that where an estate in respect of which estate duty is payable comprises land on which timber is growing, the value of the timber is not to be taken into account for the purpose of determining the rate of estate duty payable on the estate. These enactments also provide that estate duty shall not be payable on unsold timber but shall be payable, at the rate applicable to the estate, in respect of timber sold during the period elapsing until the land again becomes liable to duty upon a death. The total duty so payable in respect of sales is not to exceed the amount of duty which would have been payable on the principal value of the timber but for these special provisions. In the case of land bearing timber passing on the death of *A* to *B* for life with remainder to *C*, it has hitherto been the official practice, where *C* predeceases *B*, to regard the above-mentioned provisions as applying in relation to the death of *C*. One effect of this practice was to exempt the timber, while it remained unsold, from payment of duty by reference to the death of *C*. The other effect was to free from further liability to duty, in connection with the death of *A*, the proceeds of sales of timber sold after *C's* death, and to charge duty in respect of such sales until the death of *B* at the rate appropriate to *C's* estate, the maximum amount so chargeable being the amount computed at that rate on the principal value of the timber standing on the land at *C's* death. The Board of Inland Revenue are advised that s. 61 (5) of the Finance (1909–10) Act, 1910, as amended by s. 9 of the Finance Act, 1912, has no application to the death of a person entitled in remainder or reversion to land bearing timber, and they have directed that the above-mentioned official practice shall no longer be followed. Accordingly, in the computation of the estate duty payable in respect of the estate of the reversioner, *C*, the valuation of his reversion to land bearing timber must take into account, for the purposes of aggregation and assessment, the value of his interest in the timber standing on the land. Furthermore, as a general rule, the death of the reversioner, *C*, before his interest falls into possession, will have no effect upon the liability to duty in respect of sales of timber. Estate duty will be levied at the rate charged on the land when it last passed in possession, i.e., on the death of *A*, in respect of all sales effected during the period elapsing until the land again passes in possession and is liable to duty upon the death of *B*, the maximum amount of duty so leviable being the amount computed at the aforesaid rate on the principal value of the timber standing on the land at the death of *A*. No adjustment of duty paid under the former official practice is possible (Finance Act, 1951, s. 35), but the following rules will be applied where some duty has been paid in conformity with that practice in respect of sales since the death of a reversioner who died before becoming entitled in possession: (*a*) If the total duty already paid in respect of sales since the land last passed in possession is not less than the amount of duty computed on the principal value of the timber at that time at the rate then charged on the land, no further duty will be charged until the land again passes in possession and is liable to duty; (*b*) if the duty paid in respect of sales since the death of the reversioner is not less than the amount computed on the principal value of the timber at the reversioner's death at the rate charged on his estate, no further duty will be charged in respect of sales until the land again passes in possession and is liable to duty; (*c*) if neither para. (*a*) nor para. (*b*) applies, duty in respect of sales of timber will continue to be charged in accordance with the general rule above until the taxable limit in para. (*a*) or the taxable limit in para. (*b*) is reached, whichever is the more favourable to the estate.

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Animals (Landing from Channel Islands, Isle of Man, Northern Ireland, and Republic of Ireland) Order, 1955. (S.I. 1955 No. 1310.) 11d.

Cumberland River Board (Contributions in respect of Several Fisheries) Order, 1955. (S.I. 1955 No. 1311.) 6d.

East Sussex River Board (River Ouse (Sussex) Internal Drainage District) Order, 1955. (S.I. 1955 No. 1298.) 5d.

Exchange Control (Payments) (Italian Monetary Area) Order, 1955. (S.I. 1955 No. 1296.)

Exchange Control (Specified Currency) (Amendment) Order, 1955. (S.I. 1955 No. 1297.)

Great Ouse River Board (Alteration of Boundaries of the River Ivel Internal Drainage District) Order, 1955. (S.I. 1955 No. 1299.) 5d.

Nottingham-Derby-Stoke-on-Trent Trunk Road (Borrowash By-Pass) Order, 1955. (S.I. 1955 No. 1312.)

Retention of Cable and Pipe under Highways (Bedfordshire) (No. 1) Order, 1955. (S.I. 1955 No. 1303.)

Retention of Cables and Mains under Highways (Norfolk) (No. 2) Order, 1955. (S.I. 1955 No. 1304.)

Retention of Cables and Pipes over and under Highways (Lincolnshire–Parts of Kesteven) (No. 2) Order, 1955. (S.I. 1955 No. 1287.)

Retention of Cables, Mains and Pipes under Highways (Zetland) (No. 1) Order, 1955. (S.I. 1955 No. 1288.) 5d.

Retention of Mains and Pipes under Highways (Norfolk) (No. 3) Order, 1955. (S.I. 1955 No. 1309.)

River Dove Water Board Order, 1955. (S.I. 1955 No. 1293.) 11d.

Salford Hundred Court of Record (Extension of Jurisdiction) Rules, 1955. (S.I. 1955 No. 1295 (L. 9).) 5d.

Stopping up of Highways (Bournemouth) (No. 1) Order, 1955. (S.I. 1955 No. 1305.)

Stopping up of Highways (Bristol) (No. 3) Order, 1955. (S.I. 1955 No. 1294.)

Stopping up of Highways (Derbyshire) (No. 3) Order, 1955. (S.I. 1955 No. 1291.)

Stopping up of Highways (Gloucestershire) (No. 5) Order, 1955. (S.I. 1955 No. 1289.) 5d.

Stopping up of Highways (London) (No. 32) Order, 1955. (S.I. 1955 No. 1290.)

Stopping up of Highways (London) (No. 33) Order, 1955. (S.I. 1955 No. 1307.)

Stopping up of Highways (London) (No. 36) Order, 1955. (S.I. 1955 No. 1308.)

Stopping up of Highways (Middlesbrough) (No. 2) Order, 1955. (S.I. 1955 No. 1292.)

Stopping up of Highways (North Riding of Yorkshire) (No. 1) Order, 1955. (S.I. 1955 No. 1306.)

Teachers' Salaries (Scotland) (Amendment No. 2) Regulations, 1955. (S.I. 1955 No. 1301 (S. 124).) 5d.

Western Fire Area Administration Amendment Scheme Order, 1955. (S.I. 1955 No. 1315 (S. 125).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

POINTS IN PRACTICE

Bankruptcy—Dealings with Bankrupt—"Intervention" by Trustee

Q. *B*, a debtor, became bankrupt in 1952. In 1954 *B* sold a sidecar to *D*, a dealer, and the price was settled by two payments in cash and the sidecar was delivered to *D*. *D* was not aware that *B* was bankrupt, and the price was reasonable. Six weeks after the payment of the price, *D* received a claim from *B's* trustee for the return of the sidecar or its value. The trustee agrees that *B* could have given a good title to the sidecar, as it was acquired after the date of the receiving order, if the trustee had not intervened. We contend that "intervention" in s. 47 of the Bankruptcy Act, 1914, means intervention by the trustee between *B* and *D* and that the intervention should be made manifest to *D* before the transaction is completed to preserve the trustee's rights to the sidecar. The trustee contends that about a month before the sale to *D*, when he discovered the existence of the sidecar, he claimed it as part of the estate, and this was "intervention." He states that the position was clearly explained to *B* and the sidecar was left in his possession pending arrangement for sale by the trustee. Are we correct in our contention that the words "any intervention" in s. 47 of the Act mean intervention by the trustee between a bankrupt and a person dealing with the bankrupt for value?

A. Taking the ordinary meaning of the word "intervention" and giving due weight to its prefix, we should have thought that the trustee in this case did not intervene (i.e., come between *B* and *D*) before the completion of the transaction. In those reported cases where the nature of the intervention is described (*Cohen* v. *Mitchell* (1890), 25 Q.B.D. 262, where the trustee "demanded it of Foale"; *Hill* v. *Settle* [1917] 1 Ch. 319, where written notice was given to the third party) something more than a notice to the debtor was involved. On the other hand *Re Pascoe* [1944] Ch. 219 makes it clear that the title to after-acquired property is all along in the trustee; the bankrupt merely has certain (now statutory) powers of dealing with it. Does express prohibition by the trustee to the bankrupt of transactions involving the property take away the bankrupt's statutory powers? We fancy that a court might strive so to hold in view of the tenor of the decisions. It is a nicely balanced point, but we think the word "intervention" is so linked with the opening words of the section, "any transaction," that the other party to the transaction, before he loses his protection, must at least be aware of the trustee's assertion of his right of property.

Vendor and Purchaser—Price Payable by Instalments—Registration of Contract as Estate Contract—No Conveyance until Payments Completed

Q. *V* owns a house and about 50 acres of surrounding farm land which he is contemplating selling to *P*. It is suggested that the purchase price will be £11,000, payable as to £1,000 on exchange of contracts and thereafter by annual instalments of £500. *P* will be given vacant possession of the house on exchange of contracts, the farm lands being let. After exchange, the contract will be registered in the Land Registry as an estate contract. *P* will be given the option of rescinding the contract after he has paid not less than £3,000. No conveyance will be executed until after all the purchase money has been paid. The balance of the purchase money will not at any time attract interest. It will be seen, therefore, that *P* will have to wait twenty years before he can have the property conveyed to him. *P* is our client and he is quite agreeable to wait twenty years for the conveyance. He does not like the suggestion that he should take a conveyance now, and then execute a mortgage in favour of *V* for the unpaid balance. Apparently he wishes to save himself the legal costs on the mortgage. So long as *P* keeps up his instalments, will the signed contract of *V* plus registration in the Land Registry protect him against all eventualities until a conveyance is executed in his favour? Would there be any risk if *V* went bankrupt or died in the meantime? Can you see any strong objections to the suggested procedure?

A. We can see no substantial objection to the suggested procedure. The interest of an intending purchaser under a contract is equitable only, but registration of the estate contract gives notice (Law of Property Act, 1925, s. 198). If *V* goes bankrupt his trustee cannot disclaim the contract but must complete it (*Re Bastable* [1901] 2 K.B. 518) and so, although there might be inconvenience and expense, there is no serious risk. Similarly, if *V* dies his representatives must complete the contract; see Emmet on Title, 14th ed., p. 216. Our view is, therefore, that there is no serious risk, but: (1) care should be taken to investigate title before the contract is signed as it would not be safe to defer this until completion; (2) as the contract will be uncompleted for so long a period we would be inclined to suggest that a conveyance and mortgage back to the vendor would be likely to be more convenient in the long run.

Specific Performance of Oral Agreement to Sell House

Q. *A*, who has recently died intestate a widower leaving nine children, was the owner of a house in which he resided. Several months prior to his death he agreed with his daughter *S* that she should come and live with him for the purpose of looking after him and that he should sell her his house at an agreed price on the conditions that he was allowed to remain there during the rest of his life and that *S* should live with him and attend to him. In pursuance of this agreement *S* sold the house in which she was then residing and incurred certain expenditure in installing electric light and doing repairs and decorations in *A's* house. Before *S* moved into *A's* house *A* died. Eight of the nine children of *A* are agreed that *S* ought to be allowed to take over *A's* house on the terms previously agreed, but the ninth child of *A* objects to this and states that the house must be offered for sale by public auction and sold to the highest bidder. There is no memorandum in writing regarding the arrangements between *A* and *S* and we shall be pleased to have your views as to whether there is any part performance of this agreement and whether or not it is possible for *S* to insist on the agreement being carried out.

A. We think that *S* can put up a very strong case for specific performance against the administrators, especially if the expenditure incurred by her on the house was undertaken with the knowledge and acquiescence of *A*. We purposely say acquiescence and not approval, because it was to be *S's* property, according to her case, not to remain *A's*. That expenditure strikes us as "referable to no other title" within the meaning of that phrase, based on *Maddison* v. *Alderson* (1883), 8 App. Cas. 473, and quoted with approval in *Rawlinson* v. *Ames* [1925] Ch. 96. The sale of *S's* own house is not so unequivocal, but it is a circumstance by which *S* has altered her position so that reliance on the absence of writing would be a fraud on the part of the vendors. The argument against there being part performance would no doubt be that if *S* were to go to live with *A* on *any* terms she would no doubt insist on having electric light installed. To which our answer would be that it is unlikely that she would then have had the work done at her own expense. But obviously before proceedings are launched the whole matter (including detailed accounts of the conversations which are relied on in the form in which they can be given in evidence) ought to be put before counsel for his advice.

Executor—Knowledge of Undischarged Bankruptcy of Testator

Q. In or about the year 1905, *GJ* was, I believe, adjudged a bankrupt and so far as I am aware he never obtained his discharge. The writer was only a boy at the time so is not very clear on what actually happened. *GJ* went out of business and took employment, where he remained until he retired at the age of sixty and then went to live in the country. *GJ* has made a will appointing, *inter alia*, *EO* and another executors of his will and bequeathed the whole of his assets to his late wife's relations. *GJ* is still alive, aged ninety, and *EO* is wondering whether in the event of his decease and the proof of his will *EO* has any responsibility

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Questions which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

to use his vague knowledge as to the bankruptcy or whether in view of the long passage of time the question of any such bankruptcy can be ignored and distribution made as provided by the will. *EO* could, of course, renounce, but in view of the fact that he may be called upon to act as solicitor in the proof of the will in connection with the estate he might be asked to advise the other executor, and then again the question would arise as to whether he should disclose such information as he has in regard to the bankruptcy.

A. Even if *GJ's* estate has been built up out of earnings it appears that the earnings have been more than necessary to support himself and family. Therefore, it would appear that the estate must be regarded as after-acquired property; see Halsbury's Laws, 3rd ed., vol. 2, p. 432. In the absence of a discharge we know of no rule by which lapse of time gives protection from claims of creditors. As *EO* has notice of the bankruptcy we consider he would not be safe in distributing the estate without inquiring as to the rights of the creditors; compare *Re Bennett* [1907] 1 K.B. 149. On the other hand we are inclined to take the view that if *EO* were not an executor his knowledge would not be imputed to the executor merely because he acted as solicitor; the knowledge was not acquired in that capacity. We do not favour the suggestion that *EO* should renounce as his knowledge before taking that action might be held to be effective against a remaining executor.

NOTES AND NEWS

Honours and Appointments

The Queen has appointed Mr. WILLIAM BENTLEY PURCHASE, C.B.E., M.C., to be Coroner of Her Majesty's Household in succession to Lt.-Col. W. H. L. McCarthy, D.S.O., M.V.O., M.C. Mr. Bentley Purchase has been North London coroner for twenty-four years and has been secretary of the Coroners' Society for England and Wales since 1938.

On the retirement on 31st August of Judge Sir Gerald Hargreaves as the Judge of Circuit 37 (West London and Chesham) the Lord Chancellor has decided to transfer Judge DAYNES, Q.C., the Judge of Circuit 47 (Dartford, Woolwich, Southwark and and High Wycombe), to West London, and to appoint Mr. JOHN HARCOURT BARRINGTON to be a Judge of County Courts in his place.

Mr. B. R. THORPE has been appointed assistant solicitor to the Southampton County Borough Council. Mr. Thorpe was formerly with Bradford Corporation.

Miscellaneous

DEVELOPMENT PLANS

CITY OF OXFORD DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the City of Oxford. The plan, as approved, will be deposited in the Town Hall, Oxford, for inspection by the public.

The Faculty of Laws, University College, London, announces the following programme of lectures on current legal problems in the Autumn Term, 1955, on Thursdays (5 p.m. to 6 p.m.): 13th October: Inaugural Lecture, Good Faith in Contracts, by Professor Raphael Powell, D.C.L.; 20th October: Obscenity and the Law, by D. Lloyd, M.A., LL.B.; 27th October: Recent Developments in Air Law, by B. Cheng, Ph.D., Lic-en-Dr.; 3rd November: The Intention of the Legislature in the Interpretation of Statutes, by D. J. Payne, LL.B.; 10th November: Recent Developments in the Law of Landlord and Tenant, by E. H. Scamell, LL.M.; 17th November: *Mens Rea* and Vicarious Responsibility in Criminal Law, by Glanville Williams, LL.D. Arrangements have been made for the publication of the above lectures, further information of which may be obtained from the College. First lecture in the Chemistry Theatre. Subsequent lectures in the Eugenics Theatre, entrance Gower Street, W.C.1. Admission free, without ticket.

THE SOLICITORS ACTS, 1932 TO 1941

On 19th August, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of HAROLD JOHN STURTON, of 9 Corve Street, Ludlow, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

On 19th August, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of WILLIAM FRANK HELLYAR, of 35 New Broad Street, London, E.C.2, and 84 Foxley Lane, Purley, Surrey, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

On 19th August, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ALBERT RAYMOND BLACKBURN, formerly of 65 Westbourne Terrace, Paddington, London, W.2, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

On 19th August, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that FRED CRASTON WHITE, of Nos. 27–31 Belvoir Street, Leicester, be suspended from practice as a solicitor from 19th August, 1955, until 15th November, 1955, provided that if the respondent before the said 15th November shall have delivered to the Registrar of Solicitors an accountant's certificate complying with the provisions of s. 1 of the Solicitors Act, 1941, and covering that period which would properly have been covered by the accountant's certificate in respect of the respondent's failure to deliver which the proceedings were instituted, the said suspension from practice shall terminate on the date of such delivery as certified by the Secretary of The Law Socety in accordance with the provisions of s. 1 (7) of the Solicitors Act, 1941, provided further that if the respondent shall have delivered such an accountant's certificate to the Registrar of Solicitors before the pronouncement of the findings of the Disciplinary Committee and the Secretary of The Law Society shall certify to that effect the suspension from practice shall terminate one week from the date of the publication of the pronouncement of the findings.

On 19th August, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that DANIEL ALUN ROBERTS THOMAS, of 12 Sutherland Avenue, Paddington, London, W.9, be suspended from practice as a solicitor from 19th August, 1955, until 15th November, 1955, provided that if the respondent, before the said 15th November, shall have delivered to the Registrar of Solicitors an accountant's certificate complying with the provisions of s. 1 of the Solicitors Act, 1941, and covering that period which would properly have been covered by the accountant's certificate in respect of the respondent's failure to deliver which the proceedings were instituted, the said suspension from practice shall terminate on the date of such delivery as certified by the Secretary of The Law Society in accordance with the provisions of s. 1 (7) of the Solicitors Act, 1941, provided further that if the respondent shall have delivered such an accountant's certificate to the Registrar of Solicitors before the pronouncement of the findings of the Disciplinary Committee and the Secretary of The Law Society shall certify to that effect the suspension from practice shall terminate one week from the date of the publication of the pronouncement of the findings.

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